



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Monterey Advanced Imaging Center

File: B-253152

Date: August 24, 1993

Hugo N. Gerstl, Esq., Gerstl & Gorman, Inc., for the protester.
Wesley L. Truscott, Esq., and Gerald P. Kohns, Esq., Department of the Army, for the agency.
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's nonreceipt of amendment establishing new bid opening date, resulting in protester failing to submit timely bid, does not warrant resolicitation of the procurement where record shows agency followed established procedures for disseminating bid documents, including the amendment in question, and there is no evidence that agency deliberately attempted to exclude protester.

DECISION

Monterey Advanced Imaging Center protests the award of any contract under invitation for bids (IFB) No. DAKF03-92-B-0062, issued by the Department of the Army for magnetic resonance imaging services. Monterey contends that the agency improperly failed to furnish the firm a copy of the amendment establishing the revised bid opening date, that this failure precluded it from submitting a bid, and that the requirement should be canceled and resolicited to give Monterey an opportunity to bid.

We deny the protest.

The Army synopsisized the requirement in the September 30, 1992, Commerce Business Daily (CBD), and the IFB was issued on February 10 with a March 22 bid opening date. The protester, the incumbent contractor, allegedly did not receive a mailed copy of the solicitation, but obtained a copy from the Army when it learned about the solicitation in late February while signing an interim extension of its current contract.

On March 11, the Army issued amendment No. 0001, which contained modifications to the solicitation; it issued amendment No. 0002 on March 22 to indefinitely extend the bid opening date; and it issued amendment No. 0003 on March 30 to modify the solicitation and establish a new bid opening date of April 12. Monterey did not receive amendment No. 0003; it claims to have received only amendment No. 0002. Following receipt of this amendment, Monterey suggested in a March 25 letter that the Army amend certain requirements in the solicitation; the Army rejected this suggestion by letter dated April 5 (which was received by Monterey). At the bid opening on April 12, one bid was received, from Alliance Imaging, Inc. Monterey learned of the bid opening on April 15 while signing another extension of its current contract. On April 20, Monterey filed this protest with our Office.

Monterey argues that the Army's failure to furnish the firm a copy of amendment No. 0003 had the effect of improperly excluding the firm from the competition. Monterey maintains that the circumstances suggest that the agency's failure was a deliberate attempt to prevent the firm from competing; it notes in this regard the initial failure to even send Monterey a copy of the IFB and the fact that the Army's April 5 letter did not mention the revised bid opening date. Monterey also asserts that the receipt of only one bid raises doubt as to whether other bidders were advised of the bid opening date. Monterey concludes that the requirement should be canceled and resolicited.

A prospective offeror bears the risk of not receiving an IFB amendment unless there is evidence (other than non-receipt by the protester) establishing that the agency failed to comply with the regulatory requirements for notice and distribution of amendments, provided that the prospective contractor availed itself of every reasonable opportunity to obtain the documents. See Federal Acquisition Regulation §§ 14.203-1, 14.205, and 14.208; Southeastern Enters., Inc., B-245491.2, Jan. 17, 1992, 92-1 CPD ¶ 88; Crown Mgmt. Servs., Inc., B-232431.4, Apr. 20, 1989, 89-1 CPD ¶ 393.

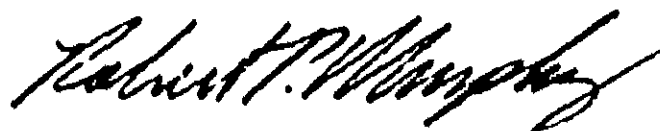
There is no evidence that the Army failed, either deliberately or otherwise, to comply with the regulatory requirements for notice and distribution of the IFB and amendments here. There is a basic procedure in place at the activity to assure that all prospective bidders receive IFBs and amendments. Each time an amendment is issued, the agency develops a new bidders mailing list (BML), adding firms that express an interest in competing and deleting firms that no longer are interested in competing; Monterey appeared on each BML compiled for the IFB and the three amendments. The agency verifies (for each mailing) every prospective bidder's address by comparing the mailing

label to the address on the BML; Monterey does not dispute that the BMLs contained the firm's correct mailing address. The packages for mailing are sent from the contracting division to the mail room, where they are picked up by a courier and delivered to the post office; a computer-generated date at the top of the BLM developed for amendment No. 0003 indicates that the amendment was sent to the firms on the list, including Monterey, on March 30. The cognizant Army contract specialist has submitted a statement indicating that he followed the established procedures for this procurement, and there is no evidence to the contrary.

Monterey's failure to receive the IFB initially in no way shows purposeful action on the agency's part; it would be just as reasonable to assume that the IFB (and, indeed, the first and last amendments) was lost or delayed in the mail. Similarly, the Army's failure to reference the revised bid opening date in its April 5 letter does not show that the agency intended to preclude Monterey from competing; since the Army already had mailed amendment No. 0003 to Monterey on March 30, it had no reason to reiterate the revised bid opening date in its April 5 letter to the firm. Finally, Monterey's speculation aside, there is no evidence that any other firm did not receive all of the amendments or, more to Monterey's specific point, that the agency somehow orchestrated the competition so that only Alliance would be able to submit a timely bid. We will not attribute unfair or prejudicial motives to contracting officials on the basis of unsupported allegations, inference, or supposition. Admiral Towing and Barge Co., B-245600; B-245602, Jan. 16, 1992, 92-1 CPD ¶ 83.

Since nothing in the record shows that the agency acted deliberately to preclude Monterey from competing, or otherwise violated applicable regulations governing the distribution of amendments, Monterey's nonreceipt of amendment No. 0003 does not warrant resolicitation of the procurement.

The protest is denied.



for James F. Hinchman
General Counsel